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THIS INSTRUMENT PREPARED,
AND AFTER RECORDING RETURN TO:

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Sonnenschein Nath & Rosenthal
8000 Sears Tower
Chicago, Illinois 60606

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Cook County Recorder 59.00



PERMANENT INDEX NUMBERS:

- 03-17-302-018
- 03-17-302-019
- 03-17-302-020
- 03-17-302-042
- 03-17-302-054
- 03-17-302-056
- 03-17-302-065

PROPERTY ADDRESS:

Southwest corner of Randolph
Arlington Heights Roads
Arlington Heights, Illinois

78 22 463 Kelly ND

COMBINED, AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

20 Sat

This Combined, Amended and Restated Mortgage, Security Agreement and Fixture Filing (this "Mortgage") is executed as of July 13, 1999, by ARLINGTON, LLC, an Illinois limited liability company ("Mortgagor"), whose address for notice hereunder is c/o M & J Wilkow Ltd., 180 North Michigan Avenue, Suite 200, Chicago, Illinois 60601, for the benefit of GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation ("Mortgagee"), whose address for notice is 209 West Jackson Boulevard, Suite 200, Chicago, Illinois 60606. Attention: Regional Manager, Portfolio Management Operations.

RECITALS

A. Mortgagee made a loan (the "Existing Loan") to American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated July 20, 1994 and known as Trust No. 118561-01 (the "Annex Trust") and Arlington Annex Limited Partnership, an Illinois limited partnership and the sole beneficiary of the Annex Trust ("Annex", and collectively with the Annex Trust, "Prior Borrower"). The Existing Loan was originally evidenced by that certain Promissory Note dated September 14, 1994 by Prior Borrower in favor of Mortgagee (the "Original Note"). The terms of the Original Note, the Original Mortgage (as defined below) and the other Existing Loan Documents (as defined below) were amended by that certain Modification Agreement dated as of April 1, 1997 by and among Prior Borrower, Mortgagee and certain affiliates of Annex (the "1997 Modification").

B. The Existing Loan is secured by, among other things, (i) that certain First Mortgage and Security Agreement made by Prior Borrower in favor of Mortgagee dated September 14, 1994 and recorded with the Cook County Recorder on September 20, 1994 as Document No. 94821006 (the "Original Mortgage"), and (ii) that certain Assignment of Rents and Leases made by Prior Borrower in

BOX 333-CTI

favor of Mortgagee dated September 14, 1994 and recorded with the Cook County Recorder on September 20, 1994 as Document No. 94821007 (the "Original Assignment of Leases"), each encumbering the real property described on Exhibit A-1 hereto (the "Annex Property"). The Original Mortgage and the Original Assignment of Leases, as amended by the 1997 Modification Agreement (which was recorded with the Cook County Recorder on April 16, 1997 as Document No. 97262638) are referred to herein as the "Existing Mortgage" and the "Existing Assignment", respectively. The Original Note, the Existing Mortgage, the Existing Assignment, and all other documents evidencing, securing or executed in connection with the Existing Loan (other than the Expansion Loan Documents, as defined below), as amended from time to time, are referred to herein as the "Existing Loan Documents".

C. Prior Borrower has conveyed the Annex Property to Mortgagor, and Mortgagor has assumed all obligations of Prior Borrower under the Existing Loan Documents pursuant to the terms of an Assignment and Assumption of Loan Documents of even date herewith. The Original Note, as amended by the 1997 Modification, is being amended and restated in its entirety by an Amended and Restated Promissory Note (the "Amended and Restated Note") of even date herewith by Mortgagor in favor of Mortgagee. The current principal balance of the Existing Loan is \$11,615,887.61.

D. Annex, Mortgagor, M&J Wilkow, Ltd. and Mortgagee are parties to that certain Reimbursement Agreement for Standby Letter of Credit dated as of December 15, 1997 (as amended from time to time, the "Reimbursement Agreement"), and the obligations of such parties to Mortgagee under the Reimbursement Agreement are currently secured by (i) that certain Mortgage, Security Agreement and Fixture Filing dated as of August 11, 1998 made by Mortgagor in favor of Mortgagee and recorded with the Cook County Recorder on August 21, 1998 as Document No. 98742831, (ii) that certain Mortgage, Security Agreement and Fixture Filing dated as of September 4, 1998 made by Mortgagor in favor of Mortgagee and recorded with the Cook County Recorder on September 21, 1998 as Document No. 98840058, and (iii) that certain Mortgage, Security Agreement and Fixture Filing dated as of May 19, 1999 made by Mortgagor in favor of Mortgagee and recorded with the Cook County Recorder on June 1, 1999 as Document No. 99522571 (collectively, the "Expansion Mortgages"). Each of the Expansion Mortgages encumbers a portion of the property legally described on Exhibit A-2 hereto (the "Expansion Parcel").

E. Concurrently herewith, Mortgagee is entering into a Construction Loan Agreement of even date herewith (the "Loan Agreement") with Mortgagor pursuant to which Mortgagee is making a construction loan (the "Expansion Loan") to Mortgagor for the construction of a retail shopping mall on the Expansion Parcel. The Loan Agreement and the other documents evidencing, securing or otherwise relating to the Expansion Loan (other than the Existing Loan Documents), as amended from time to time, are referred to herein as the "Expansion Loan Documents".

F. This Mortgage combines, amends and restates in their entirety the Existing Mortgage and the Expansion Mortgages.

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

(a) **"Indebtedness"**: The sum of all (1) principal, interest and other amounts due under or secured by the Loan Documents, (2) principal, interest and other amounts which may hereafter be loaned by Mortgagee, its successors or assigns, to or for the benefit of the owner of the Mortgaged Property, when evidenced by a promissory note or other instrument which, by its terms, is secured hereby, and (3) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Mortgagor to Mortgagee under documents which recite that they are intended to be secured by this Mortgage. In no event, however, shall the Indebtedness exceed \$40,000,000. The Indebtedness includes Participation Interest (as defined in the Loan Agreement), pursuant to which Mortgagee is, under certain circumstances, entitled to certain payments from Mortgagor based on the value of the Mortgaged Property.

(b) **"Loan Documents"**: The (1) Loan Agreement, (2) Promissory Note of even date, executed by Mortgagor, payable to the order of Mortgagee, in the stated principal amount of \$5,800,000 (the "**Note**"), which evidences the Expansion Loan and matures on April 1, 2002, (3) Amended and Restated Note, which evidences the Existing Loan and also matures on April 1, 2001, (4) the Reimbursement Agreement, (5) this Mortgage, (6) all other documents previously, now or hereafter executed by Mortgagor or any other person or entity to evidence or secure the payment of the Indebtedness or the performance of the Obligations and (7) all modifications, restatements, extensions, renewals and replacements of the foregoing.

(c) **"Mortgaged Property"**: (1) the real property collectively described in Exhibits A-1 and A-2, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "**Land**"), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "**Improvements**"), (3) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "**Fixtures**"), (4) all right, title and interest of Mortgagor in and to all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, trademarks, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs (the "**Personalty**"), (5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "**Plans**"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "**Leases**"), (8) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling or

otherwise enjoying the Mortgaged Property (the "**Rents**"), (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Property Agreements**"), (10) Mortgagor's purchase option and all other right, title and interest of Mortgagor (whether now existing or hereafter acquired) in and to that certain parcel of land more particularly described in Exhibit B attached hereto and by this reference made a part hereof (the "**Easement Parcel**") and any improvements construed thereon, (11) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (12) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (13) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (14) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (15) all of Mortgagor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

(d) "**Obligations**": All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor or any other person or entity to Mortgagee or others as set forth in the Loan Documents.

(e) "**Permitted Encumbrances**": The outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage, together with the liens and security interests in favor of Mortgagee created by the Loan Documents, none of which, individually or in the aggregate, materially interferes with the benefits intended to be provided by this Mortgage, materially and adversely affects the value of the Mortgaged Property, impairs the use or operations of the Mortgaged Property, or impairs Mortgagor's ability to pay its obligations in a timely manner.

(f) "**UCC**": The Uniform Commercial Code of Illinois or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than Illinois, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

ARTICLE 2
GRANT

Section 2.1 **Grant**. To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, SELLS and CONVEYS, to Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.1 **Title to Mortgaged Property and Lien of this Instrument.** Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property.

Section 3.2 **First Lien Status.** Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Loan Agreement (including the requirement of providing a bond or other security satisfactory to Mortgagee).

Section 3.3 **Payment and Performance.** Mortgagor shall pay the Indebtedness when due under the Loan Documents, and shall perform the Obligations in full when they are required to be performed.

Section 3.4 **Replacement of Fixtures and Personalty.** Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be first approved in writing by Mortgagee.

Section 3.5 **Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Mortgagor shall comply with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 3.6 **Inspection.** Mortgagor shall permit Mortgagee, and Mortgagee's agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such environmental and engineering studies as Mortgagee may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

Section 3.7 **Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (a) the prohibition against the further sale, transfer or encumbering of any of the Mortgaged Property, (b) the

obligation to pay when due all taxes on the Mortgaged Property or assessed against Mortgagee with respect to the Loan, (c) the right of Mortgagee to inspect the Mortgaged Property, (d) the obligation to keep the Mortgaged Property insured as Mortgagee may require, (e) the obligation to comply with all legal requirements (including environmental laws), maintain the Mortgaged Property in good condition, and promptly repair any damage or casualty, and (f) except as otherwise permitted under the Loan Agreement, the obligation of Mortgagor to obtain Mortgagee's consent prior to entering into, modifying or taking other actions with respect to Leases.

Section 3.8 Condemnation Awards and Insurance Proceeds.

(a) Condemnation Awards. Mortgagor assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Loan Agreement.

(b) Insurance Proceeds. Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property, subject to the terms of the Loan Agreement. Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly, subject to the terms of the Loan Agreement.

Section 3.9 Easement Parcel. As set forth above, this Mortgage encumbers all of Mortgagor's right title and interest (whether now owned or hereafter acquired) in and to the Easement Parcel. Mortgagor agrees that upon the acquisition of the Easement Parcel by Mortgagor, or any Affiliate (as defined in the Loan Agreement), Mortgagor or such Affiliate shall upon the request of Mortgagee execute and deliver to Mortgagee a mortgage in form and substance substantially identical to this Mortgage encumbering the Easement Parcel or an amendment to this Mortgage further clarifying that this Mortgage encumbers the Easement Parcel.

ARTICLE 4
DEFAULT AND FORECLOSURE

Section 4.1 Remedies. If an Event of Default (as defined in the Loan Agreement) exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration. Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) Entry on Mortgaged Property. Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) Operation of Mortgaged Property. Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem

reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure and Sale.** Institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Mortgagor agrees that five (5) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7.

(f) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note and/or the Amended and Restated Note either before, during or after any proceeding to enforce this Mortgage).

Section 4.2 **Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3 **Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4 **Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to a consent by the holder of any subordinate lien

on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 4.5 **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6 **Discontinuance of Proceedings.** If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 4.7 **Application of Proceeds.** Following an Event of Default, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses, (4) costs of advertisement, and (5) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold;

(b) to the payment of all amounts (including interest), other than the unpaid principal balances of the Note and the Amended and Restated Note and accrued but unpaid interest, which may be due to Mortgagee under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

Section 4.8 **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. All occupants of the

Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 4.9 **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 4.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as defined in the Loan Agreement), and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

Section 4.10 **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 5
ASSIGNMENT OF RENTS AND LEASES

Section 5.1 **Assignment.** Mortgagor acknowledges and confirms that it has executed and delivered to Mortgagee an Amended and Restated Assignment of Rents and Leases of even date (the "**Assignment of Rents and Leases**"), intending that such instrument create a present, absolute assignment to Mortgagee of the Leases and Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Rents and Leases, Mortgagor hereby assigns to Mortgagee, as further security for the Indebtedness and the Obligations, the Leases and Rents. While any Event of Default exists, Mortgagee shall be entitled to exercise any or all of the remedies provided in the Assignment of Rents and Leases and in Article 4 hereof, including the right to have a receiver appointed. If any conflict or inconsistency exists between the assignment of the Rents and the Leases in this Mortgage and the absolute assignment of the Rents and the Leases in the Assignment of Rents and Leases, the terms of the Assignment of Rents and Leases shall control.

Section 5.2 **No Merger of Estates.** So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union

of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

ARTICLE 6
SECURITY AGREEMENT

Section 6.1 **Security Interest**. This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least five (5) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2 **Financing Statements**. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor's chief executive office is in the State of Illinois at the address set forth in the first paragraph of this Mortgage.

Section 6.3 **Fixture Filing**. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

ARTICLE 7
MISCELLANEOUS

Section 7.1 **Notices**. Any notice required or permitted to be given under this Mortgage shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, personal delivery or otherwise as provided in this Section 7.1). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth on the first page of this Mortgage. Any communication so addressed and mailed shall be deemed to be given on the earliest of (a) when actually delivered, (b) on the first Business Day (as defined in the Loan Agreement) after deposit with an overnight air courier service with instructions for next Business Day delivery, or (c) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, Mortgagee or Mortgagor, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number specified in the Loan Agreement and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight

courier, or personal delivery as otherwise provided in this Section 7.1. Any party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

Section 7.2 Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 7.4 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.5 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 Subrogation. To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

Section 7.7 Loan Agreement. If any conflict or inconsistency exists between this Mortgage

and the Loan Agreement, the Loan Agreement shall govern.

Section 7.8 **Release.** Upon payment in full of the Indebtedness and performance in full of the Obligations, Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage.

Section 7.9 **Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 7.10 **Limitation on Liability.** Mortgagor's liability hereunder is subject to the limitation on liability provisions of Article 12 of the Loan Agreement.

Section 7.11 **Obligations of Mortgagor, Joint and Several.** If more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such persons or entities hereunder shall be joint and several.

Section 7.12 **Governing Law.** This Mortgage shall be governed by the laws of the State of Illinois.

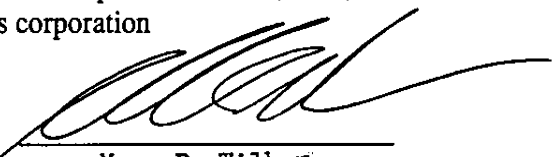
Section 7.13 **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.14 **Entire Agreement.** This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

EXECUTED as of the date first above written.

ARLINGTON, LLC, an Illinois limited liability company

By: M&J/Retail Operations - GP, Inc., an Illinois corporation

By: 
Name: Maro R. Wilkow
Title: President

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THE STATE OF ILLINOIS

§
§
§

COUNTY OF COOK

This instrument was acknowledged before me on July 14, 1999, by Marck. Wilkew
President of M&J/Retail Operations - GP, Inc., an Illinois corporation,
on behalf of said Arlington, LLC.

Jennifer L Harshbarger
Notary Public, State of Illinois



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EXHIBIT A-1

[Original Annex Legal Description]

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PARCEL 1:

THAT PART OF LOT 2 IN HARDEE'S RAND ROAD SUBDIVISION, BEING A SUBDIVISION OF PARTS OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17 AND THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 18, LYING SOUTHWESTERLY OF THE CENTERLINE OF RAND ROAD, ALL IN TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 16, 1986 AS DOCUMENT NO. 86297345, AND A 0.019 ACRE PARCEL SOUTH OF SAID LOT 2, DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLYMOST CORNER OF SAID LOT 2; THENCE SOUTH 42 DEGREES 02 MINUTES 44 SECONDS WEST 568.13 FEET TO THE SOUTH LINE OF SAID LOT 2; THENCE NORTH 89 DEGREES 47 SECONDS 42 MINUTES WEST 28.95 FEET ALONG THE SOUTH LINE OF SAID LOT 2, TO A POINT 96.40 FEET, AS MEASURED ALONG SAID SOUTH LINE, EAST OF A CORNER OF SAID LOT 2; THENCE NORTH 47 DEGREES 49 MINUTES 39 SECONDS WEST 186.71 FEET TO A SOUTH LINE OF SAID LOT 2; THENCE NORTH 89 DEGREES 47 MINUTES 42 SECONDS WEST 27.62 FEET ALONG THE LAST DESCRIBED SOUTH LINE TO A POINT 373.47 FEET, AS MEASURED ON SAID SOUTH LINE, EAST OF THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 17, AFORESAID; THENCE NORTH 47 DEGREES 57 MINUTES 53 SECONDS WEST 194.53 FEET; THENCE NORTH 31 DEGREES 32 MINUTES 09 SECONDS WEST 157.43 FEET TO A WESTERLY LINE OF SAID LOT 2; THENCE NORTH 42 DEGREES 00 MINUTES 35 SECONDS EAST 10.81 FEET TO A SOUTHWESTERLY LINE OF SAID LOT 2; THENCE NORTH 47 DEGREES 59 MINUTES 25 SECONDS WEST, ALONG SAID SOUTHWESTERLY LINE, 325 FEET TO A NORTHWEST LINE OF LOT 2; THENCE NORTH 42 DEGREES 00 MINUTES 35 SECONDS EAST, ALONG SAID NORTHWEST LINE, 550.00 FEET TO THE SOUTH LINE OF RAND ROAD (SAID SOUTH LINE ALSO BEING THE NORTHEASTERLY LINE OF SAID LOT 2); THENCE SOUTH 47 DEGREES 59 MINUTES 25 SECONDS EAST ALONG SAID SOUTH LINE, 246.30 FEET; THENCE SOUTH 42 DEGREES 00 MINUTES 35 SECONDS WEST, 230 FEET; THENCE SOUTH 47 DEGREES 59 MINUTES 25 SECONDS EAST 175 FEET; THENCE NORTH 42 DEGREES 00 MINUTES 35 SECONDS EAST 230 FEET TO THE SOUTH LINE OF RAND ROAD; THENCE SOUTH 47 DEGREES 59 MINUTES 25 SECONDS EAST, 478.67 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS

PARCEL 2:

A PERPETUAL NON-EXCLUSIVE EASEMENT ESTABLISHED PURSUANT TO A GRANT OF EASEMENT DATED JULY 10, 1990 AND RECORDED JULY 26, 1990 AS DOCUMENT 90359319 OVER, ACROSS AND UPON THE FOLLOWING DESCRIBED PROPERTY FOR USE AND MAINTENANCE OF A STORM WATER RETENTION POND FOR THE BENEFIT OF PARCEL 1:

PARCEL 2A: (ARLINGTON GROVE PORTION)

THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17 AND THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 18, LYING SOUTHWESTERLY OF THE CENTER LINE OF RAND ROAD, ALL IN TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHWESTERLY CORNER OF LOT 2 IN HARDEE'S SUBDIVISION, BEING A SUBDIVISION OF PARTS OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 17 AND THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION 18, LYING SOUTHWESTERLY OF THE CENTER LINE OF RAND ROAD, ACCORDING TO THE PLAT THEREOF RECORDED JULY 16, 1986 AS DOCUMENT NUMBER 86297345, SAID POINT BEING ON A LINE 900 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION 18 A DISTANCE OF 90.69 FEET WEST OF THE EAST LINE OF THE SOUTH EAST 1/4 OF SAID SECTION 18; THENCE NORTH 42 DEGREES, 02 MINUTES, 18 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 2 A DISTANCE OF 120 FEET FOR A POINT OF BEGINNING; THENCE NORTH 03 DEGREES, 44 MINUTES, 40 SECONDS WEST 142 FEET; THENCE NORTH 02 DEGREES, 08 MINUTES, 16 SECONDS EAST 127.88 FEET; THENCE NORTH 42 DEGREES, 02 MINUTES, 18 SECONDS EAST 48 FEET TO A POINT ON THE WEST LINE OF SAID LOT 2; THENCE SOUTH 47 DEGREES, 57 MINUTES, 42 SECONDS EAST ALONG THE WEST LINE OF LOT 2 FOR A DISTANCE OF 183.80 FEET TO A BEND POINT OF SAID LOT 2; THENCE SOUTH 42 DEGREES, 02 MINUTES, 18 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 2 FOR A DISTANCE OF 245.13 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS; AND

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PARCEL 2B: (SOUTHEAST PORTION)

THAT PART OF LOT 2 IN HARDEE'S RAND ROAD SUBDIVISION, BEING A SUBDIVISION OF PARTS OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17 AND THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 18 LYING SOUTHWESTERLY OF THE CENTER LINE OF RAND ROAD, ALL IN TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 16, 1986 AS DOCUMENT NUMBER 86297345, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHWESTERLY CORNER OF SAID LOT 2, SAID POINT BEING ON A LINE 900 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION 18, 90.69 FEET WEST OF THE EAST LINE OF THE SOUTH EAST 1/4 OF SAID SECTION 18; THENCE NORTH 42 DEGREES, 02 MINUTES, 18 SECONDS EAST ALONG THE WESTERLY LINE OF SAID LOT 2 FOR A DISTANCE OF 354.43 FEET; THENCE SOUTH 31 DEGREES, 32 MINUTES, 09 SECONDS EAST 157.43 FEET; THENCE SOUTH 47 DEGREES, 57 MINUTES, 53 SECONDS EAST 194.53 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 2; THENCE NORTH 89 DEGREES, 46 MINUTES, 28 SECONDS WEST ALONG THE SOUTHERLY LINE OF SAID LOT 2 FOR A DISTANCE OF 373.47 FEET TO A BEND POINT ON THE SOUTHERLY LINE OF SAID LOT 2, SAID POINT BEING ON THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE SOUTH 89 DEGREES, 49 MINUTES, 58 SECONDS WEST ALONG THE SOUTHERLY LINE OF SAID LOT 2 FOR A DISTANCE OF 90.69 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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EXHIBIT A-2

[Expansion Parcel Legal Description]

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UNOFFICIAL COPY**PARCEL 3**

**LOT 1 IN THE ANNEX OF ARLINGTON PHASE II BEING A SUBDIVISION IN THE WEST 1/2 OF THE
SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL
MERIDIAN, IN COOK COUNTY, ILLINOIS.**

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EXHIBIT B

[Easement Parcel Legal Description]

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PARCEL 4:

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A EASEMENT FOR THE BENEFIT OF PARCEL 1 AND 3 AS CREATED BY EASEMENT AGREEMENT DATED APRIL 1, 1999 AND RECORDED APRIL 5, 1999 AS DOCUMENT 99322489 FROM COSMOPOLITAN BANK AND TRUST COMPANY, AS SUCCESSOR TRUSTEE FIRST BANK OF OAK PARK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 19, 1973 AND KNOWN AS TRUST NUMBER 10095 TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 20, 1994 AND KNOWN AS TRUST NUMBER 118561-01 AND ARLINGTON, L.L.C., AN ILLINOIS LIMITED LIABILITY COMPANY FOR THE PURPOSE OF PARKING AND FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED LAND:

THE NORTH 88 FEET OF THE SOUTH 738.33 FEET OF THE EAST 155.0 FEET (EXCEPT THAT PART THEREOF TAKEN FOR WIDENING OF ARLINGTON HEIGHTS ROAD) OF THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE CENTER OF RAND ROAD, IN COOK COUNTY, ILLINOIS.

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